

**Editor's note: Appealed -- dismissed, Civ. No. 9322 (D.N.M. Dec. 20, 1972)**

R. M. BARTON

IBLA 72-72

72-86

Decision January 5, 1972

Oil and Gas Leases: Applications: Sole Party in Interest

Where a person files an oil and gas lease offer through a leasing service under an arrangement whereby the leasing service advances the first year's rental, selects the land, and controls the address at which the offeror may be reached, but no enforceable agreement is entered into whereby the offeror is obligated to transfer any interest in any lease to be issued to the leasing service, the service is not a party in interest in the offer merely because it may have a hope or expectancy of acquiring an interest, and the offeror is not precluded from stating that he is the sole party in interest in the offer.

4 IBLA 229

IBLA 72-72 : NM 14104 et al.  
72-86

R. M. BARTON : Protest against noncompetitive  
: oil and gas leases dismissed  
  
: Affirmed

### DECISION

R. M. Barton has appealed to the Secretary of the Interior from each of two decisions, dated July 29, 1971, and August 18, 1971, respectively, of the New Mexico state office, Bureau of Land Management, which dismissed his protests against the issuance of noncompetitive oil and gas leases to certain offerors 1/ whose offers were drawn first in drawings held on July 12, and August 6, 1971, pursuant to the simultaneous filing provisions of the oil and gas regulation, 43 CFR Subpart 3112.

In each instance the offers were filed for the offerors by either Central Southwest Oil Corporation, Independent Oil Lease Associates or Western States Geological Survey. Each offer used on its entry card the address of the filing service. Central Southwest listed Box 2107, Roswell, New Mexico, as its address, Independent Oil Lease, Box 28042, Dallas, Texas, and Western States, P.O. Box 94, Le Sueur, Minnesota. It further appears that the filing services advanced the first year's rental required to be submitted with each

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1/ The offerors and their leases are:

Linda Scifres	14104
Lawson C. Mayo	14118
R. M. Oberhofer	14160
George Pitzer	14164
Ruth S. Johnson	14167
Barbara Goins	14172
Otto K. Eichman	14307
J. Gail Emerick	14338
Robert J. Marquardt, Sr.	14124
Fred Eble	14331
Opal Chapman	14330
N. E. Michaud	14322

offer. The filing service also in some cases selected the land for which an offer was filed. Each offeror certified that he is the sole party in interest in the offers made in his behalf.

In his protests, Barton stated that the identifiable ownership of mineral leases is by law a public record, that the offers were filed by a filing service and that there is no evidence of any authority on record for a filing service to have filed applications on behalf of successful offerors, citing regulations now 43 CFR 3100.0-5, 3102, and 3112.5-2, respectively.

The state office noted that the offers were filed by companies which offer lease filing services and file many drawing entry cards covering various parcels included in each monthly notice of lands available for simultaneous filing. It then pointed out that in John V. Steffens, 74 I.D. 46 (1967), the Department had reviewed and dismissed protests against offers filed under identical circumstances. It held that under the Steffens case the use of a common address by individuals in these circumstances is not prohibited and that Barton had not shown that any one other than the offeror had an interest in the offer.

On appeal, Barton contends that the practices adopted by the filing services make maintaining records of acreage control difficult, present an address which is not the true address of the offeror, and give the filing services an unfair advantage in obtaining an interest in the lease by assignment. He further argues that the offerors are not the sole party in interest. Finally, he asserts that control by the filing services of the means of communication with the offeror creates or tends to create an unreasonable restraint of trade and an illegal monopoly.

The contention that a common address makes maintenance of acreage controls more difficult is without merit. If any doubt arises because an individual has used an address in common with other offerors, the land office can make necessary inquiries before it issues a lease.

The argument that leasing services violate the anti-trust laws by their control of communications with the offerors is couched in general terms. It glosses over the fact that it is not the offeror who would be violating the anti-trust laws, but argues that the offeror should be denied his lease because the filing service may be engaged in an illegal practice. If the appellant, or indeed the offeror, is harmed by the practices of the filing services, his injuries are best relieved by an independent action against the filing services rather than by rejection of the offers or cancellation of the leases.

The other arguments raised by Barton are the same as those discussed at length in the Steffens decision. There it was held (syllabus):

Where a person files an oil and gas lease offer through a leasing service under an arrangement whereby the leasing service advances the first year's rental, selects the land, and controls the address at which the offeror may be reached, but no enforceable agreement is entered into whereby the offeror is obligated to transfer any interest in any lease to be issued to the leasing service, the service is not a party in interest in the offer merely because it may have a hope or expectancy of acquiring an interest, and the offeror is not precluded from stating that he is the sole party in interest in the offer.

The pertinent regulations discussed in the Steffens case and referred to by appellant have not undergone any substantive change. The Board finds the discussion in Steffens persuasive and sees no reason to disturb its conclusions.

So far we have assumed that the facts are identical as to all the filing services. Western States, however, points out that Barton's appeal incorporates his brief filed in support of his appeal against offers filed by Central Southwest and that he has presented no evidence whether his allegations against Central Southwest are pertinent to it. In particular it denies that it makes any attempt to control communications between the offeror and a prospective purchaser. In view of our conclusion, it is unnecessary to attempt to distinguish between the practices of the filing services.

Some of the offerors have filed a motion for summary dismissal of the Barton appeal for the reason that he did not file an offer for some of the tracts and is therefore without an interest necessary to sustain an appeal. In light of our holding on the merits, we find it unnecessary to consider these motions.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081) the decision of the state office is affirmed.

Martin Ritvo, Member

We concur:

Joan B. Thompson, Member (concurring specially)

Newton Frishberg, Chairman.

Joan B. Thompson, concurring.

I agree that the regulations do not clearly disqualify an offeror who participates in a simultaneous filing drawing procedure by using an oil and gas leasing service as has been done here. In the absence of information showing a service company actually had a legally enforceable right to obtain an interest in a lease offer participating in the drawing, the basic principle that a statutory preference right will not be denied an applicant unless there is a violation of a clear regulatory requirement precludes denial of a lease or cancellation of a lease to such an offeror in these circumstances. Georgette B. Lee et al., 3 IBLA 272 (1971); A. M. Shaffer et al., Betty B. Shaffer, 73 I.D. 293 (1966). This is especially true here where the offerors participated in the drawing long after a Departmental ruling had sanctioned the system employed. Nevertheless, that ruling, the Steffens decision cited in the main opinion, demonstrates that though the letter of the regulations has not been violated, in a practical way the spirit of the one-chance-per-person system envisaged in the simultaneous-drawing procedure suffers where the leasing service actually gains an advantage over others in negotiating with its client to purchase a lease where the client wins at the drawing.

There is no monetary or proprietary interest of the Government which is affected by the system employed by these leasing services. Indeed, the Government may be enriched because of the activities of these services to the extent of additional \$10 filing fees supplied by participants in the drawings induced by the activities of these service companies. However, the protestant has submitted information which suggests that at least one of the service companies has engaged in improper conduct to its own advantage. The fact that the clients and perhaps others may have some remedy in a court of law against the company has been argued and cited as a reason for this Department to do nothing here. It is this aspect of the case that disturbs me.

The real question posed for consideration is if the Government (where it suffers no financial harm and indeed may be benefited therefrom) where it has been made aware of improper practices of such a company, should in the future close its eyes to this information and do nothing. It is true that the Government would carry an impossibly heavy burden if it attempted to protect its citizens from every possible unfair advantage taken against them by other citizens. Nevertheless, where this Department has been apprised of tactics such as that involved here I believe it should not merely close its eyes to such activities. The tacit ignoring of probable wrongdoing gives an aura of approval which fosters such behavior. As long as this

Department has regulations providing for the one-chance-per-person concept in the simultaneous drawing procedure, then, I believe, the spirit of such a system, as well as the letter of the law regarding such procedure, should be safeguarded.

For the reasons expressed, I do not believe under the present regulations the remedy can be the rejection of offers or cancellation of leases. Instead, the solution in this Department is to seek ways of preventing future abuses. If the governmental policy is to gain additional money in its leasing of oil and gas, then Congress should be urged to prescribe a means whereby that objective may be attained in a more satisfactory and less hypocritical way than is currently being attained in the simultaneous-filing procedure for noncompetitive leases.

Until there is any change in legislation and policy concerning the procedure and means of issuing oil and gas leases in the circumstances where the simultaneous filing procedure is now employed, I believe this Department through changing the regulations and administrative practices should prescribe measures aimed at preventing some of the abuses and unfair practices of these oil and gas lease services.

I also recommend that this Department furnish such information as it has concerning the practices and activities of these service companies to other Government agencies, such as the Post Office and the Federal Trade Commission, to assure that there has been no violation of any federal law.

